

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

G4S REGULATED SECURITY  
SOLUTIONS, A DIVISION OF  
G4S SECURE SOLUTIONS (USA) INC.  
f/k/a THE WACKENHUT CORPORATION

and

Cases 12-CA-26644  
12-CA-26811

THOMAS FRAZIER, an Individual

and

CECIL MACK, an Individual

**ACTING GENERAL COUNSEL'S REPLY BRIEF TO  
RESPONDENT'S ANSWERING BRIEF TO EXCEPTIONS**

Pursuant to Section 102.46(h) of the Rules and Regulations of the National Labor Relations Board, Series 8, as amended, the undersigned Counsel for the Acting General Counsel files the following Reply Brief to Respondent's Answering Brief to Exceptions and in Support of ALJ's Decision.<sup>1</sup>

**Responses**

A. Contrary to Respondent's Assertion, a Bargaining Unit that Does Not Specifically Include or Exclude the Lieutenant Classification Does Not Serve as a Basis to Establish Supervisory Status (Pages 10 and 37 of Answering Brief)

Respondent's claim that the collective-bargaining agreement for security officers provides for the specific exclusion of lieutenants is incorrect given the

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<sup>1</sup> As used herein "RX" refers to Respondent's exhibits, "GCX" refers to the Acting General Counsel's exhibits, and "Tr." refers to the transcript, identified by the page, line, and witness.

The mistake at page 11 of the Acting General Counsel's brief in support of exceptions, noted at page 25 of Respondent's answering brief, is acknowledged. Thus, alleged discriminatee Cecil Mack was told by management that the main - not exclusive - purpose of evaluations prepared by lieutenants was to set goals for the security officers. (Tr. 295:13-19 Mack). This distinction is insignificant. There is insufficient evidence to establish a direct link between the evaluations and promotions or other terms of employment of security officers, as explained at pages 8 to 13 of the Acting General Counsel's Brief in Support of Exceptions.

specific language in the agreement. The Recognition and Scope clause states the following:

The Company recognizes the International Union, Security, Police, Fire Professionals of America (SPFPA) and its Amalgamated Local No. 610 as the exclusive collective bargaining representative for all employees designated by the National Labor Relations Board's Certification of Representative issued on July 8, 1999 in case No. 12-RC-8349, including all security officers, and watchpersons [Unarmed Officer], performing guard duties as defined in Section 9(b)(3) of the National Labor Relations Act, as amended, who are employed by the Employer at the Turkey Point Nuclear Power Plant, located in Florida City, Florida; but excluding all office clerical employees, professional employees and supervisors as defined in the National Labor Relations Act, as amended. (RX 42)

As shown by the above, the lieutenant classification is not specifically included or excluded from the bargaining unit description in the aforementioned collective-bargaining agreement. Additionally, since there is no provision for the exclusion of all other employees, the language cannot be read to clearly exclude lieutenants. *National Public Radio Inc.*, 328 NLRB 75 (1999).

In Case 12-RC-8349, the Union had been certified on July 8, 1999, to represent all full-time and regular part-time security officers, watchpersons, and central alarm system (CAS) operators and secondary alarm system (SAS) operators at Turkey Point. *Wackenhut Corp.*, 345 NLRB 850, 858 (2005). Then, the Union was certified on March 4, 2003, in Case 12-RC-8876, to represent all sergeants performing guard duties at Turkey Point. (GCX 3). In September 2003, the Union challenged Respondent's attempt to eliminate the sergeant position, to remove the CAS/SAS operators from the bargaining unit, and to reassign those guards to the nonunit lieutenant position at issue here.

Thus, the Union has maintained the position that CAS/SAS operators and sergeants are bargaining unit employees. The Union has also maintained the position that sergeants were merely reclassified as lieutenants and are the same. (Tr. 266:12-13 Lambert). Contrary to Respondent's claim, at no time has the Union agreed to or conceded that lieutenants are supervisors as defined in the Act. (Tr. 260:2 Lambert). The contract language in the Recognition clause described above, which has remained unchanged since the original contract was negotiated in 1999 and throughout the litigation of Respondent's unlawful actions in 2003, does not establish that lieutenants are considered by the parties to be supervisors as defined in the Act. (Tr. 266:25-267:2 Lambert). Furthermore, the Board determined in *Wackenhut Corp.*, 345 NLRB 850 (2005) that the lieutenants in issue were not supervisors.

More importantly, even if the Union thought the lieutenants were supervisors within the meaning of the Act, that would make no difference in the outcome of these cases. The question of importance is whether the lieutenants possess statutory supervisory authority and the answer to that question is that they do not.

**B. The Board's Post 2005 Decisions Regarding the Criteria for Establishing Supervisory Status Do Not Affect the Board's Previous Analysis of Lieutenants in the Wackenhut Decision (Page 17)**

The Board's decisions in the *Oakwood Healthcare* (348 NLRB 686 (2006)) trilogy<sup>2</sup> are consistent with the decision in *Wackenhut* concerning the issue of whether lieutenants are statutory supervisors. In *Wackenhut*, the Board

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<sup>2</sup> See also *Croft Metals*, 348 NLRB 717 (2006) and *Golden Crest Healthcare Center*, 348 NLRB 727 (2006).

considered Respondent's contention that lieutenants were statutory supervisors based on authority to direct and discipline security officers and determined that it failed to meet its burden. In *Oakwood*, and related cases, the Board provided guidance in unfair labor practice proceedings regarding the definitions of two indicia of supervisory status in Section 2(11) of the Act. With respect to 2(11)'s criteria to "assign" and "responsibly to direct" employees, the Board noted that these requirements must be exercised with "the use of independent judgment." The Board made clear that the evidentiary burden placed on those urging supervisory status is significant and substantial, finding that purely conclusionary evidence, testimonial assertions lacking in specifics that individuals exercised supervisory duties, and a "paper showing" consisting of job titles, descriptions, or evaluation forms, are not sufficient to establish supervisory status. *Golden Crest*, 348 NLRB at 731; *Avante at Wilson, Inc.*, 348 NLRB 1056, 1057 (2006). The *Oakwood* decision therefore reinforces the principles and findings of the Board's prior decision in *Wackenhut*.

C. Respondent Is Mistaken When It Says that Policy 107 Calls for Termination for a Third Tardiness Infraction (Pages 32-33)

Contrary to Respondent's contention that under Policy 107 Crystal Smith should have been discharged on October 28, 2009, for a third incident of tardiness, the provision that applies, Section 4.8 (entitled "Tardy") clearly calls for "Suspension and written disciplinary"---the very discipline she received. (GCX 18).

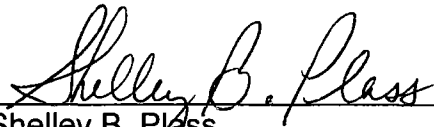
D. Respondent Is Mistaken When It Says the Acting General Counsel Failed to Address Assignment of Work (Page 33)

Respondent argues that the occasional transfers of security officers to other posts by lieutenants constitute the supervisory duty of assignment of work. Respondent further contends that the Acting General Counsel failed to address this matter. Respondent is in error on both counts. See Section C.1.e) beginning on page 20, and specifically pages 22-23, of the Acting General Counsel's Brief in Support of Exceptions.

IN CONCLUSION, Respondent's justification for the discharges of Thomas Frazier and Cecil Mack is the mistaken position that they are supervisors within the meaning of the Act. There is insufficient evidence to support Respondent's position, and the Review comments establish that they were discharged because they engaged in protected, concerted activities, as further discussed in the brief in support of exceptions.

DATED at Miami, Florida this 21<sup>st</sup> day of September, 2011.

Respectfully submitted,

  
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## CERTIFICATE OF SERVICE

I hereby certify that a copy of Acting General Counsel's Reply Brief to Respondent's Answering Brief to Exceptions in the matter of G4S Regulated Security Solutions, A Division of G4S Secure Solutions (USA) Inc., f/k/a The Wackenhut Corporation, Cases 12-CA-26644 and 12-CA-26811 was served electronically upon the following individuals on this 21<sup>st</sup> day of September, 2011.

By electronic filing:

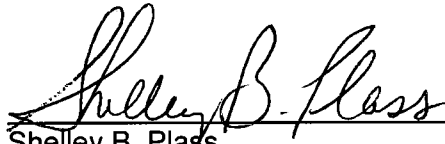
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